

1 read back?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Read the question back,
4 please.

5 (The record was read back as
6 requested.)

7 THE WITNESS: Yes, I think that is
8 true.

9 BY MR. KORTANEK:

10 Q. Now, Mr. Stanziale, there are, are there
11 not, several side agreements referenced in the
12 term sheet? For example, one dealing with a
13 dispute against Pepper Hamilton?

14 A. Referring to separate documentation?

15 Q. Yes.

16 A. That's correct.

17 Q. Do you recall that?

18 And those terms aren't disclosed
19 anywhere in this term sheet or in your motion?

20 A. No, they are not.

21 Q. And there's also reference in the term
22 sheet to another side deal involving cooperation
23 or information sharing.

24 Those terms aren't disclosed or set

1 forth anywhere, are they?

2 MR. WOLFSON: Objection, Your Honor.
3 That's not an accurate representation.

4 THE WITNESS: I don't recall. I
5 don't recall the second, as you characterize it,
6 side deal.

7 MR. KORTANEK: May I approach, Your
8 Honor?

9 THE COURT: Yes.

10 THE WITNESS: I don't recall the
11 content of it, the terms.

12 This is the term sheet.

13 BY MR. KORTANEK:

14 Q. Correct.

15 A. Okay.

16 Q. If you could turn to Paragraph 7, and
17 there's a sentence that is about seven lines up
18 from the bottom. It begins at the right-hand
19 column.

20 It says the Trustee and Royal will
21 enter into an agreement in connection with
22 litigation on behalf of the estate acknowledging
23 their joint interest, and allowing each other
24 access to privileged information, and continuing

1 on.

2 A. Yes. I read it.

3 Q. Does that agreement exist today?

4 A. I believe it does.

5 Q. But it hadn't been disclosed?

6 A. No. It hadn't been executed.

7 Q. Okay. But it also hasn't been disclosed
8 to us, or to the Court, or anybody?

9 A. Not to my knowledge.

10 Q. Okay. And would you agree with me, sir,
11 that the Pepper Hamilton provision and this
12 information sharing provision, those agreements
13 are material to the overall settlement?

14 A. Yes.

15 Q. Now, if you turn to Paragraph 8 or Section
16 8, the very last two words on that page say, a
17 separate letter. And that talks about -- it
18 speaks for itself, but it says Royal agrees to
19 withdraw its administrative claim and so on.

20 And the last line says are reduced
21 by amount satisfactory to Royal as indicated to
22 the Trustee in a separate letter. Is that yet a
23 third undisclosed set of agreements that are part
24 of this settlement?

1 A. Yes.

2 Q. Is it fair to characterize the provisions
3 in that term as material to your settlement of as
4 the Trustee with Royal?

5 A. Yes.

6 Q. With Royal, do you have a clear
7 understanding, sitting here today, exactly how
8 Royal will prosecute the proposed claims against
9 the CDI schools that you seek to delegate to
10 Royal with respect to the pending litigation
11 against the CDI schools in Tennessee?

12 A. I have not read their complaint.

13 Q. You've never read Royal's complaint
14 against our clients?

15 A. I've never -- I have not read Royal's
16 complaint against your client.

17 Q. Are you aware there's a counterclaim that
18 has been filed in that action?

19 A. No. I haven't read the answer, either.

20 MR. KORTANEK: No further questions.

21 THE COURT: All right. There was
22 someone else who wanted to examine Mr. Stanziale.

23 MR. KLAYMAN: Good afternoon, Your
24 Honor. My name is Barry Klayman, K-L-A-Y-M-A-N,

1 of the law firm of Wolf, Block, Schorr &
2 Solis-Cohen. I'd like to introduce my partner,
3 David Stern from our Philadelphia office.

4 We moved his admission pro hac vice
5 yesterday. It's yet to be acted on by the Court.

6 We represent Transport Training,
7 Inc., and various other creditors in this case.

8 THE COURT: Welcome, Mr. Stern.
9 Good afternoon.

10 MR. STERN: Good afternoon, Your
11 Honor. Thank you for allowing me to appear.

12 THE COURT: Is there a reason why
13 you're up, sir?

14 MR. WOLFSON: Their objection was
15 filed late. And there's -- and there's no 2019
16 statement filed.

17 They're appointed to represent
18 multiple claims. We would object to their
19 appearing.

20 THE COURT: Well, when you say their
21 objection was filed late?

22 MR. STERN: We filed it at five
23 o'clock or 5:15.

24 THE COURT: When was it due?

1 MR. STERN: Four o'clock, Your
2 Honor.

3 THE COURT: Well, I'm going to allow
4 that. Have you filed a statement indicating the
5 various people you represent?

6 MR. STERN: Your Honor, in the
7 Chapter 11 we had filed proofs of claims on
8 behalf of 17 of the schools that we represent.
9 There was no other filing, Your Honor.

10 And to the extent that there was no
11 other filing, we'll supplement the filing
12 immediately.

13 Thank you.

14 THE COURT: Go ahead. Objection
15 overruled.

16 BY MR. STERN:

17 Q. Mr. Stanziale, you want to file a me too
18 objection; correct?

19 A. That is correct. We believe it was very
20 well articulated by the other objectors.

21 THE COURT: You're not satisfied
22 with Mr. Kortanek's cross-examination?

23 MR. STERN: No.

24 THE COURT: You do believe -- agree

1 with me how low the standard is?

2 MR. STERN: We do, Your Honor.

3 THE COURT: Not that I'm suggesting
4 that it doesn't -- once I get there, I don't have
5 to listen anymore, I guess is what I'm saying.

6 It can be a very -- he may be
7 meeting a very high standard. I'm not debasing
8 what he said. I just wanted to make sure you do
9 understand that he doesn't have to prove a whole
10 lot.

11 MR. STERN: We understand that, Your
12 Honor.

13 BY MR. STERN:

14 Q. Mr. Stanziale, the notice that went out to
15 creditors is -- refers to the settlement term
16 sheet, which is the document that you have been
17 referring to; correct?

18 A. Yes.

19 Q. And that's the only documents that's gone
20 out to creditors; correct?

21 A. In reference to?

22 Q. In terms of the settlement.

23 A. As far as I know.

24 Q. And counsel has already indicated that

1 there are maybe other documents that are
2 associated with the term sheets; correct?

3 A. That's correct.

4 Q. And it's anticipated that those documents
5 were incorporated as part of that term sheet?

6 A. It will be incorporated if the Court so
7 approves.

8 Q. How would the creditors, the unsecured
9 creditors know what the terms of the settlement
10 are if the term sheet does not include all of the
11 documents? Are they supposed to guess?

12 A. They would object. They would come to
13 Court.

14 They would place their objection on
15 the record.

16 Q. Okay.

17 A. Let the Court decide what it wanted to do.

18 Q. Okay. Now, it's anticipated that this
19 document will be amended; correct, the term
20 sheet, to reflect those items that were referred
21 to here today?

22 As I remember, there were three
23 items that the order would reflect as changes to
24 the agreement. And those three things would be

1 the amount of the secured claim, the deletion of
2 undertaking other matters in the fee application,
3 and professionals that anticipate that the term
4 sheet will be changed; correct?

5 A. That's correct.

6 Q. Okay. Now, under Paragraph 14 of the term
7 sheet, doesn't it also say that this term sheet
8 can only be modified by a writing signed by both
9 parties?

10 A. I believe it does.

11 Q. Do you have a writing signed by both
12 parties incorporating those terms?

13 A. We are in Court at this time.

14 Q. That's not my question.

15 A. Well, I'm going to answer your question.
16 If the Court approves this document, an order
17 will be submitted to the Court with those
18 changes.

19 Q. Is that fundamentally fair to the
20 creditors to, after the fact, meaning you've
21 noticed all the creditors out there that this is
22 what you've agreed to, and now you've changed it
23 at the Court hearing, but you haven't given the
24 creditors notice? And the only notice they'll

1 get is an order which was in effect never -- the
2 changes were never in the notification.

3 THE COURT: Is that a question or
4 are you arguing to me?

5 MR. STERN: No, I am asking him, as
6 the Trustee, whether that's fair notice to the
7 creditors.

8 MR. McMICHAEL: I object to the
9 question. It's argumentative.

10 THE COURT: Excuse me?

11 MR. McMICHAEL: It's argumentative.

12 THE COURT: At least. I'll allow
13 the question.

14 THE WITNESS: Answer the question?
15 I'm sorry, Your Honor.

16 I think the question will have to be
17 read.

18 THE COURT: He's asking you whether
19 you think it's fair to have terms that the --
20 amending the agreement in Court and the creditors
21 never knew about the amendments.

22 Is that the substance?

23 MR. STERN: That's it, Your Honor.

24 THE COURT: Without the bluster

1 added to it. Okay.

2 THE WITNESS: It certainly wouldn't
3 be fair if -- it would not be fair if the
4 creditors didn't know about it. But, in fact, we
5 are in public session and the creditors do know
6 about it.

7 BY MR. STERN:

8 Q. How would someone who -- strike that, Your
9 Honor.

10 Have you --

11 THE COURT: Are you suggesting --
12 counsel, let me just understand the thrust of
13 that question.

14 Are you suggesting that the changes
15 that -- the adjustments to the deal, which were
16 put on the record by counsel, are so material
17 that they would require renoticing.

18 Because I'll tell you: If it was
19 part of a confirmation hearing, I would be
20 finding that they were all beneficial to the --
21 to the creditors and finding them non-material.

22 Are you suggesting because this --
23 that regardless of how miniscule and how
24 material, that it's a 7 and not an 11, that all

1 these changes have to be renoticed?

2 MR. STERN: Your Honor, I don't know
3 what the changes will say. This is what has been
4 negotiated at the hearing.

5 THE COURT: Well, one of them, you
6 were just told it brings down the amount of the
7 alleged secured claim from 45 to under \$16
8 million. That's one.

9 Now, you can't -- the unsecured
10 creditors are going to argue, no, it should be
11 higher.

12 MR. STERN: I'm relating to -- the
13 issues are pertaining to the side letters and
14 side agreements.

15 THE COURT: Oh, all right. Then you
16 didn't make that clear.

17 MR. STERN: Well...

18 THE COURT: I've got you. All
19 right.

20 MR. STERN: I don't know whether
21 they are -- whether they're material or not,
22 because I've never seen them.

23 THE COURT: I understand. I thought
24 you were referring to the adjustments that were

1 put on the record by Mr. McMichael.

2 MR. STERN: I never got to the rest
3 of them, Your Honor, but they're included. Also,
4 I think it's abundantly clear, the term sheet, by
5 its own term, says it only can be modified in
6 writing by -- signed by the parties.

7 So we're not at that point yet,
8 because the Trustee has already indicated that
9 there's going to be some modification. But more
10 fundamental to the issue to the fairness of this
11 settlement is the fact that we don't know what
12 those side agreements are.

13 And they may be material. They may
14 not. We may agree that there's no objection to
15 it.

16 BY MR. STERN:

17 Q. Getting back to the analysis or due
18 diligence that the Trustee performed really
19 active to approving the settlement, did you
20 retain any other expert to evaluate the claims
21 that were asserted against Royal?

22 A. No. Well --

23 Q. Anyone other than yourself or counsel?

24 A. No.

1 Q. Why?

2 A. I didn't think it was necessary.

3 Q. Isn't it true, though, that the two
4 complaints, as I read it, assert over \$70 million
5 worth of claims which you admit you felt, in good
6 faith, were sustainable in terms of the Trustee's
7 ability to pursue those claims; correct?

8 A. Yes.

9 Q. So you took a \$70 million case and, based
10 on your experience and expertise, which I assume
11 is substantial, and your counsel's expertise, you
12 decided that the settlement that was reached as
13 memorialized by this term sheet is fair and
14 reasonable?

15 A. In the context of the entire matter, the
16 answer to the question is yes.

17 Q. Okay. So I go back to my question: Why
18 did you not feel it necessary to seek the advice
19 of any other third party expert as to the
20 reasonableness of this settlement?

21 A. As I looked at the -- I looked at the --
22 at this case in its entirety. I looked at the
23 allegations that were about not only in
24 complaints and answers, and in discovery, but as

1 a result of conversations with other persons
2 involved in this case.

3 And I concluded that while
4 they're -- while there were -- there was a basis
5 to pursue claims with regard to Royal, that there
6 were other claims that were very substantial in
7 this case that required pursuit by the estate.

8 And I looked at the entire case, and
9 in the context of the entire case. And what I
10 sought to -- as a result in this case, i.e. to
11 bring a substantial amount of dividend to the
12 estate.

13 In looking at that, I decided
14 that -- I came to the conclusion, subject to the
15 Court's approval, of course, I came to the
16 conclusion that this settlement in its entirety
17 was a valid settlement.

18 Q. Now, when you talk about benefit to the
19 estate, Mr. Stanziale, the 4.9 million takes into
20 consideration a 1.9 million administrative claim
21 that would go back to Royal; correct?

22 A. Go back to Royal only upon -- only upon
23 success of litigation in excess of that amount.

24 Q. What are the amount of the administrative

1 claims that have been filed to date?

2 A. Administrative claims are in the --
3 approximately, under four million.

4 Q. So in the context of this settlement --

5 A. Excuse me, sir.

6 Q. I'm sorry.

7 A. That includes, of course, professional
8 fees, et cetera.

9 Q. Well, that's -- does that include the
10 Royal claim or not?

11 A. Yes, it would include the Royal claim.

12 Q. So there's four million in administrative
13 claims. You're collecting 4.9 from Royal.

14 Isn't it true that the benefit
15 conferred to the estate, to the extent that the
16 professionals seek compensation, would be very
17 little. 900,000 would be left to fund all these
18 settlements, all these other pieces of
19 litigation?

20 A. I don't believe you understand -- pardon
21 me. I don't believe you and I agree with the
22 terms of this agreement.

23 As I understand the terms of this
24 agreement, if after litigation is commenced and

1 there is a -- there is a result that benefits the
2 estate in a certain -- in a -- recognized in a
3 dollar amount, which I can't -- I can't determine
4 at this point, but to the extent that there is a
5 result, a financial result, the \$1.9 million or
6 anything over it -- let me restate that.

7 If, for example, we brought
8 litigation and that litigation was funded by the
9 sum of money set forth in this agreement, and as
10 a result of that we either settled or got a
11 judgment of \$10 million, then the agreement
12 states that Royal will receive, subject to Court
13 approval, the funds that it advanced.

14 So that I could benefit the estate
15 by, roughly, \$8 million.

16 Q. But that arrangement only applies to
17 Royal, it doesn't apply to the other
18 professionals who have administrative claims who
19 can now seek compensation from the Court from the
20 funds that you've created?

21 A. The other professionals that would seek --
22 would seek payment would seek payment as a result
23 from the funds set forth in the estate. That's
24 correct.

1 Q. So that would diminish the amount of the
2 settlement available to use the funds to this
3 litigation that you feel is so important for the
4 benefit of the creditors; correct?

5 A. Yes.

6 Q. Have you done an analysis as to the
7 ultimate benefit to the estate after payment of
8 the administrative claims?

9 A. Any analysis that I would do would be
10 based in real time. And the administrative
11 claims at this particular point exceed the amount
12 of funds that I have on hand.

13 If that's the answer to the
14 question.

15 Q. Okay. So how would you ever fund the
16 settlement if, in fact, the funds that you're now
17 deriving will be used to pay administrative
18 claims?

19 MR. WOLFSON: Objection. I don't
20 understand the question.

21 THE COURT: Well, I sure don't.

22 Restate the question. Break it down
23 into understandable components.

24 MR. STERN: Very good, Your Honor.

1 BY MR. STERN:

2 Q. To the extent that the administrative
3 claims exceed five million, and you're collecting
4 five million in settlement, isn't it possible and
5 probable that that five million will be
6 diminished by the administrative claims very
7 quickly?

8 A. Yes.

9 Q. So what is going to be used to fund these
10 lawsuits that you claim are the basis for this
11 settlement?

12 A. Administrative claims -- administrative
13 claims are the -- obviously, the Chapter 11
14 administrative claims, and there are Chapter 7
15 administrative claims.

16 Q. I understand that.

17 A. And I know you understand that the Chapter
18 7 claims are paid first, and the remainder would
19 be any balance on hand after those claims are
20 paid would be paid to the administrative claims.

21 If you're saying that if I take this
22 \$5 million and I pursue the litigation, and I'm
23 unsuccessful in this litigation, will I have
24 depleted the \$5 million and have nothing left for

1 either, you know, the balance of Chapter 7 claims
2 or the Chapter 11 administrative claims; that is
3 correct.

4 Q. Well --

5 A. I hope that's what your question is.

6 Q. Actually it's backwards. The question is
7 if right now fee applications are filed and
8 orders are entered allowing payment of
9 administrative claims, there won't be any money
10 left to fund litigation against third parties;
11 correct?

12 A. I don't agree with that. I would say the
13 answer is not correct.

14 Q. Why?

15 A. Because the first claims to be paid are
16 claims in the Chapter 7 administrative claims.
17 Chapter 7 administrative claims come nowhere near
18 \$5 million.

19 Q. How much are they?

20 A. If allowed by the Court, they would be,
21 approximately, a million.

22 Q. Okay. And those claims would be the
23 claims of the Trustee, and the Trustee's counsel,
24 and special counsel such --

1 A. Correct.

2 Q. Mm-hmm.

3 Now, did you -- do you have any
4 expertise in litigating securitized loan claims?

5 Strike that.

6 Do you have any expertise in
7 litigating cases involving securitized loans?

8 A. I -- over the course of my career, I may
9 have. I may have been involved in litigating
10 those claims.

11 But I can't specifically recall a
12 litigation of a securitized claim. I have
13 litigated literally thousands of claims.

14 Q. Now, you felt comfortable at the time you
15 filed the complaint that this was protected and
16 complex litigation; correct?

17 A. Yes, indeed.

18 Q. What has changed today, other than the
19 fact that the Trustee can fund the litigation
20 against Royal, that has now caused you to agree
21 to the settlement?

22 A. I think the basis of the settlement is
23 that pursuing the claim against Royal, both
24 claims against Royal make it no less complex.

1 And with any litigation, there is always the
2 possibility that I will be unsuccessful.

3 Royal has filed an answer. My
4 experience with Royal thus far has been that they
5 will take this case as far as they can go, and
6 they will appeal to every Court they can get to.

7 They will take extensive discovery.
8 And they believe that they have a valid defense.

9 Now, the fact that I don't believe
10 the defense is valid is not what a Court, or a
11 jury, or a judge may believe is valid or not
12 valid.

13 So because of the complexity of
14 litigation, because of the complexity of the
15 case, because of the defense that was filed, and
16 because of the extraneous matters that come in,
17 because of the allegations of fraud that abound
18 in this case, there is a possibility that they
19 may succeed.

20 And they're willing to put \$5
21 million up close to the -- on the table. Three
22 million, they can never -- 1.9 million that they
23 might have an opportunity to get back presumably
24 if we're successful in subsequent litigation, and

1 three million that they'd never get back.

2 Q. Well, let's talk about that. Why are they
3 entitled to the 1.9 million?

4 A. Well, I believe they'd be entitled to the
5 1.9 million if they're -- if I'm going to use
6 that 1.9 million to bring in substantial assets
7 to the estate, they should be -- have a right to
8 be reimbursed for having expended that money,
9 because I don't have that money.

10 That's money that I, as a Trustee on
11 behalf of the creditors, don't have to expend.

12 But, conversely, if I'm not
13 successful, they don't get it back.

14 Q. Mr. Stanziale, the issue, as I see it, and
15 by your testimony, if you had the funds available
16 today to fund the litigation against Royal,
17 meaning that the estate had sufficient assets to
18 adequately fund the litigation, would you still
19 have entered into that settlement?

20 A. I don't think -- I don't think the issues
21 change whether I had the money or didn't have the
22 money. I think the fact is that there's always a
23 possibility that they could be successful.

24 And --

1 Q. But you --

2 A. -- I would have --

3 THE COURT: Let him finish.

4 MR. STERN: Sorry, Your Honor.

5 THE WITNESS: There's always the
6 possibility that they would be successful, and I
7 would lose out on the opportunity to get not less
8 than \$3 million.

9 BY MR. STERN:

10 Q. Have you consulted with any other counsel
11 to see whether they'd be interested in taking on
12 the case against Royal on a contingency fee
13 basis?

14 A. No.

15 Q. Why not?

16 A. Well, first of all, I think that besides
17 believing that the counsel Debtor involved, that
18 are involved with me in this case, which are my
19 own firm, are capable and experienced in this
20 litigation, Number 1.

21 Number two, there is an extensive
22 learning curve that would have to be undertaken
23 by any other firm that took this on.

24 And so if the firm said, Oh, I'll

1 take this on on a contingency basis, I'm not sure
2 the representation would be as adequate as the
3 representation that I have.

4 Q. But your answer is that you have not
5 endeavored to determine whether any --

6 THE COURT: He answered the
7 question. Move on.

8 I mean, if this is -- you know, war
9 of attrition, I understand.

10 Let's move along. I mean, you
11 understand the standard he's got to meet.

12 Ask your questions. Don't argue
13 with the witness.

14 MR. STERN: Thank you, Your Honor.

15 BY MR. STERN:

16 Q. In reviewing the term sheet, it indicates
17 that the Trustee is to get due deference to the
18 position of Royal. Does the Trustee have veto
19 power over Royal's decision to proceed with
20 litigation that the Trustee decides not to
21 pursue?

22 A. The -- if I decide not to pursue this
23 litigation, Royal has the option to pursue it.
24 The answer to your question is, no, I don't have

1 a veto power over their right to pursue a piece
2 of litigation.

3 Q. Are you giving up your delegated authority
4 and responsibility under the Bankruptcy Code by
5 allowing Royal to sue whoever they want?

6 A. No.

7 Q. Why is that?

8 A. First of all, Royal is a creditor. And as
9 a creditor, they have a cause of action.

10 They have a right to bring an action
11 against any party that I bring an action to, by
12 and large. And that's -- that's the answer to
13 number one.

14 Answer number two, I have a
15 responsibility, fiduciary responsibility as a
16 Trustee, and under the code. And I don't believe
17 providing a creditor who has a right to bring an
18 action, not to mention a \$550 million creditor to
19 bring an action, I don't believe that giving him
20 an opportunity to pursue cause of action is
21 waiving, delegating, or in any other way avoiding
22 my responsibility as a fiduciary.

23 Q. What happens if a counterclaim is asserted
24 in the cause of action asserted by Royal, what

1 would be the Trustee's position?

2 A. I don't understand your question.

3 Q. What if in the event that the Trustee
4 decides not to initiate legal action, and Royal
5 in the name of the trustees on behalf of the
6 estate brings legal action, a counterclaim is
7 asserted against the estate management, against
8 the estate?

9 A. Then that would be -- then that will be
10 defended by -- under the auspice -- they're
11 bringing -- they're bringing a cause of action
12 under the auspices of the estate. Then they will
13 defend that counterclaim on behalf of the estate.

14 Q. And what happens if the counterclaim is
15 sustained and there's a substantial award entered
16 against the estate, who's going to pay for that?

17 A. I think -- I don't know if I can answer
18 that question. It's highly speculative.

19 MR. WOLFSON: These are misleading
20 the whole basis of this case and the state of
21 law. There's been a bar date set in this case.

22 If there was any claim asserted by
23 way of a counterclaim that was not already
24 asserted by way of a claim, they could only be

1 used to offset the amount of any judgment. It
2 could not give rise to a new claim that doesn't
3 already exist against the estate.

4 THE COURT: Is what you're
5 suggesting that the bar date has already passed?

6 MR. WOLFSON: Correct.

7 THE COURT: You may answer the
8 question.

9 THE WITNESS: I don't know the
10 answer, but I'm going to -- I can't -- I'm not
11 going to take a position for Royal. If a
12 counterclaim were sustained against the estate,
13 it was costly to the estate, I think that I would
14 look to Royal.

15 But it would be -- in any event, it
16 would be if it were payable and didn't become an
17 administrative insolvent estate, it would attach
18 to the claim of Royal. So you know, if I might
19 just take a little bit of leave here, you know,
20 as Trustee, we have effective -- by Friday -- we
21 will, effective Friday, have filed 60 lawsuits in
22 this case.

23 We have a lawsuit by the Trustee.
24 The Trustee has filed a lawsuit against Mr. and

1 Mrs. Yao. The Trustee is about to file a lawsuit
2 against a professional firm involved in this case
3 and others.

4 So there is an inordinate -- when I
5 say inordinate, there is a great deal of
6 litigation that the Trustee and this estate is
7 pursuing without -- without the aid, assistance,
8 or otherwise of Royal.

9 So this is -- this has been a very
10 active case in the sense of litigation. As I
11 said, 60 -- 60 cases will be filed soon.
12 Possibly more.

13 And again, I might add, I believe
14 they're trucking schools that they're being filed
15 against, for the most part.

16 They're also being filed against
17 others besides the trucking schools, insiders.
18 The case of one, a Playboy bunny who received a
19 million and a half dollars. An escort service.
20 And certain casinos in Las Vegas, and other
21 insiders.

22 So we are actively pursuing the
23 litigation we need to pursue in this case. And
24 Royal's litigation is only part of the -- part of

1 the litigation program the estate has undertaken
2 here.

3 Q. Isn't it -- I believe you had already
4 testified that the amount allowed as the
5 unsecured prepetition claim of around 516 million
6 was never calculated with certainty by the
7 Trustee, it was a number that you assumed was
8 correct.

9 Or how did you derive or how did you
10 conclude that number was accurate?

11 A. Well, the -- there is a judgment entered
12 into the -- in the United States District Court
13 which my counsel, Mr. McMichael, alluded to
14 against Royal in the approximate amount of 380
15 million.

16 There is a judgment entered into the
17 United States District Court with the District of
18 Delaware against PNC Bank for 110 million.

19 There is a judgment entered against
20 Wilmington Trust in the same Court for,
21 approximately, 12 million. I'm not sure exactly
22 what that adds up to.

23 But there are -- there is the
24 additional advance that Royal made in the case,

1 which my counsel indicated was collateralized,
2 but was not a security interest.

3 And interest has been running for a
4 year on that -- on those judgments entered by the
5 United States District Court. So my assumption
6 that the total amount is in excess of \$550
7 million, in my view, is fairly accurate.

8 Q. But the settlement does not allow any --
9 doesn't allow the Trustee to contest the amount
10 of that allowed unsecured claim down the road,
11 other than money that may come back in as a
12 result of this litigation being overturned;
13 correct?

14 A. Well --

15 THE COURT: It's an agreement. It's
16 a settlement.

17 They're fixing their claim. I think
18 that you're forgetting that this is all on the
19 record as a proffer.

20 And it's -- the hour is growing
21 late. And to go over ground that already is in
22 the proffer, I don't see as terribly productive.

23 Mr. McMichael put the proffer in.
24 Let's move on.

1 BY MR. STERN:

2 Q. Do any of the unsecured creditors have the
3 right to contest the proof of claim filed by
4 Royal under your settlement agreement?

5 A. There's no mention of the rights of
6 anyone. Is that a legal question or a factual --

7 Q. No. As the Trustee, would you object if
8 another creditor of the estate objected to the
9 proof of claim asserted by Royal?

10 A. Oh, Royal would object.

11 Q. I'm asking whether the Trustee would
12 object.

13 A. I've stood by the claims submitted here.
14 I don't know if it's my responsibility to object.

15 I don't --

16 Q. Would it --

17 A. Why would I? I mean, I'm sorry.

18 You're asking the questions.

19 Q. No. I want you to finish.

20 I apologize.

21 Well, I think we can all agree that
22 part of the settlement that is the allowance of
23 a -- of the claimant management, it would bar the
24 unsecured creditors.

1 THE COURT: Are you asking me or the
2 witness?

3 THE WITNESS: Isn't that what
4 allowance means?

5 MR. STERN: That's correct.

6 THE COURT: Okay.

7 THE WITNESS: If the Court -- if
8 the -- if the claim was allowed and the Court
9 approves it, an objection would be -- would be --
10 I suspect it would be overruled and not
11 sustainable.

12 BY MR. STERN:

13 Q. So the bottom line is that at the end of
14 the day, there will be, under your analysis, very
15 little available for the unsecured claims which
16 amount to about \$60 million?

17 A. That's -- you're here. If you object, so
18 state it.

19 But the answer to your question is,
20 at the end of this hearing, it's my assumption,
21 if the Court approves it, the Court may not
22 approve it, but if the Court approves it, then
23 anyone seeking to object will be summarily
24 dismissed.

1 Q. How would it be a detriment to the estate
2 to allow the claims, subject to the rights of
3 other creditors, to come in and object?

4 MR. WOLFSON: Objection, Your Honor.
5 It's way beyond the scope.

6 This is -- it has nothing to do with
7 the reasonableness of this settlement asking the
8 witness' opinion of some other hypothetical
9 situation.

10 THE COURT: Well, I assume what he's
11 asking is why did you negotiate that? And I
12 think the answer is pretty obvious that that
13 wasn't the deal.

14 MR. WOLFSON: That's not the deal we
15 assume we're going to.

16 THE COURT: If you want to examine
17 him on what other settlements he might have
18 entered into, that Royal would not have agreed
19 to, I guess you can ask that question.

20 MR. STERN: No. That would be
21 argument.

22 THE COURT: It seems to me the
23 answer is pretty obvious.

24 MR. STERN: It would be argument.

1 And I don't need to ask him that.

2 I don't have any further questions.

3 THE COURT: Thank you.

4 Anyone else want to examine this
5 witness?

6 Redirect?

7 MR. McMICHAEL: Brief redirect.

8 BY MR. McMICHAEL:

9 Q. Mr. Stanziale, you have the settlement
10 term sheet in front of you?

11 A. Yes, I do.

12 Q. Could you look at the paragraph that deals
13 with Paragraph 6? I just want to deal with these
14 off-the-record so-called side agreements.

15 A. I see it.

16 Q. Do you see Paragraph 6? Could you explain
17 to the Court why it is that the settlement
18 threshold described in Paragraph 6 is not put in
19 the record?

20 THE COURT: Mr. McMichael, this is
21 the Pepper Hamilton one?

22 MR. McMICHAEL: I'm sorry?

23 THE COURT: Is this the Pepper
24 Hamilton one, so-called side agreement?

1 MR. McMICHAEL: Yes.

2 THE COURT: Okay.

3 THE WITNESS: Well --

4 BY MR. McMICHAEL:

5 Q. Do you just want to put that in the
6 record?

7 A. First of all -- first of all, Royal has a
8 cause of action of its own, if it wishes to
9 proceed against Pepper Hamilton. And Pepper
10 Hamilton, if Pepper Hamilton sought to negotiate
11 a settlement with the estate, with the Trustee,
12 it's our view that they wouldn't proffer money to
13 the Trustee, and then leave themselves open to a
14 lawsuit, another lawsuit, possibly under the same
15 set of facts, absent collateral estoppel, et
16 cetera.

17 So any settlement that we would
18 enter into with -- if we were fortunate to do so
19 with Pepper, would necessarily require a sign off
20 from Royal.

21 Now, why do we not set forth that
22 amount in here? What this agreement says is that
23 there's a minimum amount that Pepper would agree
24 to without any further opportunity to object.

1 And so we came to a conclusion as to
2 what that amount would be. If the amount that we
3 would settle for is under this amount that Royal
4 feels is justifiable, Royal can either say, Yeah,
5 I'll go along with it, or say, No, I'm not going
6 to go along with that.

7 But any amount that we settle for
8 over this particular amount, Royal will have no
9 say in whether the estate accepts that settlement
10 or not.

11 Q. Would it be a bargaining disadvantage for
12 the Trustee in trying to settle a claim against
13 Pepper Hamilton for Pepper to know that amount?

14 A. Of course, it would.

15 Q. Okay. And isn't that why you didn't put
16 it in the agreement?

17 A. Yes, it is.

18 Q. Okay. And is it true that we have a side
19 letter with Royal that documents that amount?

20 A. Yes, we do.

21 Q. Okay. And have you authorized us to file
22 that under seal?

23 A. Yes, I have.

24 Q. Okay. So you're not attempting to hide it

1 from the Court?

2 A. No, I'm not.

3 Q. You just don't want Pepper to find out
4 about it, because of the obvious implications; is
5 that correct?

6 A. Yes.

7 Q. Is the same thing essentially true with
8 respect to the threshold amount for the
9 settlement of Chapter 11 administrative claims
10 that appears in Paragraph 8, same basic theory?

11 A. Yes.

12 Q. Okay. We have a side letter?

13 A. Yes.

14 Q. And you've authorized us to file that
15 under seal with the Court --

16 A. Yes.

17 Q. -- if the Court wants to inspect it?

18 A. Yes.

19 Q. But, obviously, it would be an advantage
20 to those admin creditors from the Chapter 11 if
21 they knew what that number was; right?

22 A. Yes.

23 Q. All right. Now, let's just talk about
24 admin claims for one more second, and then I'll

1 sit down.

2 You were asked a lot of questions
3 about administrative claims. So let me just go
4 over it with you again, so we are clear what
5 we're talking about.

6 You said there was \$4 million of
7 administrative claims. Isn't it true that about
8 two million of it was from the chapter?

9 A. Yes.

10 Q. About half of it?

11 A. Yes.

12 Q. And isn't it true that under Paragraph 8,
13 as long as we meet our target, Paragraph 8 of the
14 term sheet, Royal will withdraw its \$7 million
15 claim?

16 A. Yes.

17 Q. So that comes out.

18 And do you have objections? If you
19 can't resolve the Chapter 11 admin claims, do you
20 have objections to those claims?

21 A. Yes.

22 Q. And last, but not least, the 1.9 million
23 dollar admin claim that Royal gets under this
24 agreement, they can't take that out of your \$3

1 million settlement; right?

2 A. No.

3 Q. All right. One more question.

4 Is there money in the estate --

5 A. Yes.

6 Q. -- today?

7 A. Yes.

8 Q. Without the settlement, there is cash in
9 the estate?

10 A. Yes.

11 MR. McMICHAEL: That's all I have,
12 Your Honor. I'll have some argument if the Court
13 wants to hear it later.

14 THE COURT: Any recross?

15 MR. KORTANEK: No, Your Honor.

16 MR. STERN: No, Your Honor.

17 THE COURT: Thank you,
18 Mr. Stanziale, you may step down. Any other
19 evidence from the moving party?

20 MR. McMICHAEL: No, sir. The
21 Trustee rests.

22 THE COURT: All right. Any
23 witnesses from the other side?

24 MR. KORTANEK: No, Your Honor.

1 MR. STERN: No, Your Honor.

2 THE COURT: Very well. I'll hear
3 argument.

4 MR. KORTANEK: Your Honor, the CDI
5 schools have objections that are on three
6 principal grounds.

7 One is the delegation concept.

8 Two is process.

9 And three is what I'll call merits
10 of the settlement.

11 On the point of delegation, Your
12 Honor, I think that Cybergenics is an important
13 milestone, but it is only a starting point.

14 First, I think that Mr. Wolfson
15 turns Cybergenics on its head a little bit. It
16 is, indeed, a case where the Third Circuit, and
17 then the On Bank Third Circuit was only deciding
18 whether a committee should be delegated estate
19 causes of action. But it is definitely a fair
20 characterization that it wrestled with that
21 concept mightily.

22 THE COURT: But let me understand
23 them. These -- delegation is only in causes of
24 action that the Trustee independently uses his

1 judgment that he's not going to bring --

2 MR. KORTANEK: That's correct.

3 THE COURT: So does that hurt the
4 creditors? And you're here as a creditor, not as
5 a defendant.

6 MR. KORTANEK: Right.

7 THE COURT: Why does that hurt the
8 creditors if the Trustee says, I'm not going to
9 do it. Is it worth it, or I don't think it's
10 worth it, or I don't want to spend my time on it,
11 or I don't think it's a good enough cause of
12 action to pursue to have somebody else who's
13 interested in collecting money say, okay, I'll do
14 it.

15 MR. KORTANEK: Whether --

16 THE COURT: Isn't that what we have
17 here?

18 MR. KORTANEK: Well, no. Your
19 Honor, the question is not whether it hurts
20 creditors.

21 I was going to take Your Honor back
22 to the STN case, which is out of the Second
23 Circuit.

24 THE COURT: Which case?

1 MR. KORTANEK: STN.

2 THE COURT: Yeah.

3 MR. KORTANEK: It's a Second Circuit
4 case, and it's a very important case. It's a
5 1995 case.

6 The cite is 779 F. 2d 901. And STN
7 and lot of cases that follow it articulated a
8 standard for when a party seeks to obtain
9 delegation of an estate cause of action.

10 First of all, when you think of the
11 whole Bankruptcy Codes and what a Trustee or
12 Debtor-in-possession has under 544, they have
13 things that are given to the Trustee.
14 Hypothetical creditor standing, without the
15 baggage, let's say that comes with being an
16 actual true creditor who would have to bring a
17 fraudulent transfer claim.

18 I thought it was very interesting to
19 hear questions and answers about potential cross
20 claims or counterclaims. Because it will be
21 especially awkward for someone like Royal to be
22 standing in the shoes of a supposed fiduciary for
23 the estate, which I think one has to accept
24 someone bringing an estate cause of action, if

1 it's being delegated, not sold.

2 If it's being delegated, what comes
3 with that is the fiduciary duties that an estate
4 fiduciary would have, which I think they've
5 acknowledged begrudgingly that they would have to
6 file fee applications.

7 We appreciate that they have moved
8 our direction, but also they have to be free of
9 conflicts.

10 Take a look at 327(e), for example,
11 Your Honor. That really -- you talk about the
12 lowest point of a professional's lack of conflict
13 as an example when an estate cause of action is
14 going to be pursued, you can bring in a special
15 litigation counsel.

16 But the most important thing
17 articulated in 327(e) is that they cannot hold an
18 interest or represent an interest.

19 THE COURT: So why isn't that an
20 issue to be -- you heard that, in fact, if this,
21 in fact, happens, stop me if I'm misstating it --
22 you are -- they're going to come in with a motion
23 for permission to do that.

24 MR. WOLFSON: Your Honor, that would

1 only happen in connection with the Paragraph 2
2 claims if the Trustee's counsel, all of them,
3 attempt to bail out of the case, and there's
4 nobody else left representing the Trustee.

5 THE COURT: So --

6 MR. WOLFSON: As to right now, as
7 the testimony indicated, it is the anticipation
8 of the parties that the Trustee is going to bring
9 all of the litigation. What, as Your Honor
10 properly noted, Paragraph 7 is designed solely to
11 say that, in the event the Trustee chooses not to
12 bring a particular cause of action that Royal
13 believes ought to be pursued, then, at our own
14 cost and expense on behalf of the estate, we can
15 do it.

16 The one exception that we know about
17 today, and as far as we know the Trustee is going
18 to be bringing all of the other actions, but the
19 one exception we know about today at the request
20 of the Trustee is the CDI, DDI litigation.

21 And --

22 THE COURT: All right.

23 MR. WOLFSON: That's the only one.

24 THE COURT: I don't want to waste

1 your time with something I've already decided.
2 I'm going to overrule your objection on
3 delegation.

4 Move on to the other points.

5 MR. KORTANEK: Thank you, Your
6 Honor.

7 Your Honor, we'll be moving for a
8 stay pending appeal, because I think it's clearly
9 something that the Third Circuit or the District
10 Court will find important, and we shouldn't have
11 our rights prejudiced.

12 Your Honor, --

13 THE COURT: What right is being
14 prejudiced by the right not to be sued by Royal?

15 MR. KORTANEK: Not at all, Your
16 Honor. But the right that's being prejudiced is
17 when an estate fiduciary who's -- the exercise of
18 his fiduciary duty to decide to settle the CDI's
19 claim has not been challenged as an appropriate
20 exercise of that duty.

21 Today, the Trustee, again, he
22 iterated he thought that was a good business
23 judgment as a Trustee and as a fiduciary. That
24 right would now be given against a very -- the

1 very party that, by Royal's own choosing it, it
2 sued us on the same claims in Tennessee.

3 We have counterclaimed in a five or
4 seven-count complaint seeking from Royal all the
5 damages that our clients have suffered, seeking
6 doubling of those damages. You have the Trustee
7 acknowledging that he has valid -- he believes he
8 has valid claims against Royal.

9 So what you have is an inherent and
10 irreconcilable conflict of interest that I've
11 never seen in all the STN or Cybergenic-type
12 cases.

13 So Your Honor, I want to be clear
14 that the conflict issue is the remaining point
15 for us and for the estate, and we think it's
16 irreconcilable as far as Royal's interests are
17 concerned.

18 Think about how the litigation will
19 be prosecuted. There are hundreds --

20 THE COURT: I've given you my
21 ruling.

22 MR. KORTANEK: Thank you, Your
23 Honor.

24 Your Honor, I guess what I'm getting

1 into, we'll submit papers for motion for stay,
2 and we'll do that in writing.

3 Your Honor, as to the --

4 THE COURT: Did you argue the 327(e)
5 issue --

6 MR. KORTANEK: We did raise that
7 section, Your Honor.

8 THE COURT: -- in your objection?

9 MR. KORTANEK: Yes. I raised it as
10 a benchmark because, to me, it was important to
11 think about how the Bankruptcy Code was written,
12 that even where there's --

13 THE COURT: Counsel, you know your
14 virtue of protecting the system is very
15 impressive, but raising these things out of the
16 dozens, perhaps hundreds of creditors, your
17 virtue is -- I'm not going to question your
18 virtue, but your motives are suspect.

19 MR. KORTANEK: That's fine, Your
20 Honor. And in fairness, the same can be said for
21 Royal and seeking the delegation only against us.

22 THE COURT: But Royal's putting up
23 the bucks, too. And, you know, if you want to
24 stall and do that, fine.

1 The worse that happens is that
2 somebody else will sue you. I mean, you know...

3 MR. KORTANEK: Well, that's fine,
4 Your Honor.

5 THE COURT: You're being sued.
6 You're a defendant.

7 Defend the case. Don't waste a lot
8 of time, effort, and money on side issues.

9 Let's move onto your other
10 arguments.

11 MR. KORTANEK: Your Honor, the
12 second point is a process. You have an agreement
13 in front of you that it's interesting that they
14 have decided, evidently in response to the
15 objections, that they will now file these
16 material side agreements under seal. But they
17 haven't been filed yet.

18 It's admitted that they are
19 material, and they haven't been disclosed to Your
20 Honor. I think that alone is cause --

21 THE COURT: I'm not going to approve
22 the agreement until I get them.

23 MR. KORTANEK: I appreciate that,
24 Your Honor. That's certainly an important

1 point --

2 THE COURT: You do understand that
3 by -- if they filed them in open Court, at least
4 their uncontroverted testimony is there being
5 competitive disadvantage to which you -- or you
6 have a claim in this case.

7 MR. KORTANEK: I understand.

8 THE COURT: I really don't want to
9 do that. Do you?

10 MR. KORTANEK: I don't disagree with
11 that, Your Honor. Again, it's a process. I
12 think it's important.

13 THE COURT: All right.

14 MR. KORTANEK: Now, on the merits,
15 Your Honor, I thought it was -- the one thing
16 that really sticks out to me when you look at a
17 half a billion dollar claim, that will be
18 irrevocably allowed today if Your Honor were to
19 grant the motion, the case is essentially over,
20 and -- as to all other creditors are concerned.

21 Did you read -- rhetorical question.
22 Did you really hear enough today to "end the case
23 for other creditors"? Specifically the Trustee
24 told Your Honor that -- what I think is the

1 biggest potential neutron bomb as to the claim,
2 the contract-based claim back against the estate.

3 To me a 510(c) claim is a very, very
4 important issue. And it has not been explored as
5 to any potential 510(c) predicated on the aiding
6 and abetting claim that was only refiled a few
7 months ago by the Trustee.

8 So it looks to us, and I think the
9 record shows that since that complaint was filed
10 in April, very little has actually been done. We
11 don't -- I didn't hear any clear evidence that
12 there were actual depositions or examinations
13 taken in that litigation.

14 I thought the cross by the other
15 objecting counsel was also important, that there
16 was no expert retained at any time to look at the
17 aiding and abetting claims, and other claims that
18 could be leverage -- leverage under a 510(c).

19 Maybe not a meritorious one, but
20 certainly having a lot of value to other
21 creditors of the estate.

22 Because if you subordinate just a
23 part of this claim, given what's been represented
24 about non-Royal creditors, that's of enormous

1 impact to other creditors. Your Honor, our
2 litigation in Tennessee will, in fact, be
3 pursuing claims against Royal on many of those
4 theories.

5 And it will be interesting, Your
6 Honor, if the Tennessee District Court will be
7 hearing those things. It's going to go to trial
8 at some point, perhaps a year from now.

9 And only time will tell whether, you
10 know, who proves right in terms of what Your
11 Honor is being asked to do today.

12 But those issues are engaged, and I
13 think it's a fair statement, just as Your Honor
14 was convinced that the Trustee should not have
15 approved the settlement with our client, based on
16 all the evidence that Royal brought up from the
17 Tennessee litigation without our participation.

18 Well, Your Honor, the same can be
19 said going the other direction. So we didn't
20 bring that show to Your Honor, because quite
21 frankly, they didn't -- we didn't have the six or
22 seven weeks that Royal had when the Trustee filed
23 the motion as to our settlement.

24 So you really have a remarkable

1 mirror image as to what Royal knew, what it
2 didn't know. And is there any basis for a
3 510(c)?

4 That ought to, with all respect,
5 have some seed of doubt that I think doesn't meet
6 the lowest range.

7 THE COURT: Well, seed of doubt, I
8 mean, you know, yeah, I've got seeds of doubt all
9 over the place. But he doesn't have to make a --
10 very much of a showing. That's my point.

11 I mean, is the burden -- does he
12 have to get rid of all my seeds of doubt?

13 MR. KORTANEK: Your Honor, that's a
14 poorly chosen phrase.

15 THE COURT: But I mean --

16 MR. KORTANEK: Your Honor --

17 THE COURT: It's not my judgment,
18 would I do this? It's his judgment measured by
19 the lowest end of the spectrum of reasonableness,
20 isn't it?

21 MR. KORTANEK: Well, that's what
22 we've always thought, Your Honor. And in fact,
23 you know, what Your Honor saw on the settlement
24 for our claim, although I was excluded from the

1 courtroom, was an awful lot of evidence with no
2 testimony from Royal. Documents that were taken
3 out of context.

4 Where you are today is at least
5 we've had live testimony. And through that
6 testimony, I think the most important tool in
7 dealing with the Royal claim has been that that
8 stone has been left completely unturned.

9 That's more than a seed of doubt. I
10 don't think that passes muster as even satisfying
11 the lowest range of reasonableness under the
12 standard that Your Honor is supposed to apply.

13 Because even a partial
14 subordination -- if we're only talking about 10
15 million, or 20, or 30 in other claims, a partial
16 subordination of a half a billion dollar claim of
17 a few million -- few million dollars would mean
18 that those dollars go to other creditors first,
19 and then the rest can go to Royal.

20 As I understand the economics of
21 this deal, even leaving the three million on the
22 table, Royal's taking back 90 percent of it. I
23 may be missing something, but that's how I see
24 it.

1 THE COURT: Well, if there's -- I
2 don't see that at all. I think it's 90 percent
3 of what's left as long as it's not -- and it's
4 only up to a million nine, and then they get --

5 MR. KORTANEK: I can be corrected on
6 that. I know they have the million nine
7 superpriority, but the three million typical bank
8 deal.

9 THE COURT: Let me ask you, counsel:
10 You seem to think that -- you were very concerned
11 in your objection about the timing of this thing,
12 yet, you haven't honored that today. And at
13 least two creditors, maybe more if they file
14 their statements, as they should have already
15 done are objecting.

16 Why do you think that is?

17 MR. KORTANEK: Well, I asked the
18 witness, Your Honor, candidly. I asked the
19 witness how much of a factor the time was to the
20 Trustee.

21 And I was going to get to that.
22 It's a tertiary argument.

23 I think it's clear from the motion,
24 Your Honor, that a very significant reason for

1 filing it when they're filing it is they need a
2 war chest.

3 THE COURT: You already heard, but
4 he also said he just filed -- he's already filed
5 more than 60 lawsuits.

6 MR. KORTANEK: That is right, Your
7 Honor.

8 THE COURT: And that there's money
9 in the estate.

10 MR. KORTANEK: That's right. I'm
11 not making that my first argument.

12 I still think the timing is suspect.
13 I don't think it's an issue.

14 THE COURT: But I'm not suspect of
15 the timing. I understand -- I get the sense that
16 you felt that things would be different and more
17 people would object if there was more time.

18 And I mean, I haven't seen any
19 creditor file a motion asking for more time.
20 I've only seen two out of the hundreds of
21 creditors even taking the interest to show up.

22 Now, is there something misleading
23 about the notice?

24 MR. KORTANEK: For -- Your Honor,

1 for a settlement that's been negotiated for six
2 months, for a settlement that the story of the
3 case will tell, it has virtually changed the case
4 in a remote fashion.

5 THE COURT: My view is somewhat
6 different than yours. I see the Trustee spending
7 a very significant amount of time and energy
8 duking it out, very preliminary grounds with
9 Royal with no focus on other things.

10 And you may not have seen it all,
11 but it's -- I mean, it's been a war of attrition
12 on both sides.

13 And I understand why the Trustee
14 would like to get on with other things,
15 particularly, and I have no reason to disbelieve
16 them. If their evaluation of the litigation was
17 what he said it was, I don't know why I should
18 disbelieve that.

19 MR. KORTANEK: Well --

20 THE COURT: I mean, I'm concerned,
21 510(c), that maybe he could have squeezed a
22 little more out of Royal. You know, that's his
23 judgment, not yours.

24 MR. KORTANEK: Well, that's right,

1 Your Honor. Although, respectfully, I don't
2 think he exercised any -- I think that's what the
3 evidence shows on that point, because he
4 didn't -- he did not analyze if he were -- had
5 any chance of success on the aiding and abetting
6 claims as he said, whether that would dovetail
7 into any 510(c). So I don't think that's there.

8 And Your Honor, that's essentially
9 our argument, and we'll sit down.

10 Thank you.

11 THE COURT: Thank you.

12 MR. STERN: Your Honor, he
13 articulated the objections. I won't repeat them.

14 I think what really -- what really
15 stood out in the testimony of the Trustee and
16 what bothered me most about the settlement is the
17 fact that it was clear that it wasn't -- was a
18 war of attrition.

19 That's something that motivated the
20 trust at the -- to do the settlement. We all
21 understand that.

22 THE COURT: It's part of litigation.
23 It's part of litigation.

24 MR. STERN: I question why the trust

1 didn't seek out other alternatives. If the
2 Trustee thought it was too costly, too expensive
3 to handle it, didn't have the manpower or
4 whatever, I would say that prudence dictates the
5 minimum level that you see, if there's any other
6 alternatives.

7 The Trustee clearly testified that
8 he didn't consider offering this case to another
9 counsel who might be competent, who might be able
10 to handle it, who might have the capacity and the
11 resources to duke it out and benefit the estate.

12 What we've done here is it's a
13 capitulation to the 800-pound gorilla, with all
14 due respect, because they had the resources to
15 beat the Trustee based on their ability to fund
16 it. And it was clear through the Trustee's own
17 testimony that, you know, he's called it a day.

18 Now, that may have been prudent for,
19 on his standpoint, to say, hey, you know, I
20 really have had enough of this litigation, but
21 from the standpoint, the bigger picture, and I
22 believe, and Your Honor, I represent many of the
23 schools here on 93 that I filed, and I will file
24 the statement, there is no litigation pending.

1 We are -- we represent the unsecured
2 creditors. We have several million dollars in
3 claims.

4 I've been following the bankruptcy
5 since the Chapter 11 was filed. I have not taken
6 a proactive stance, because there's nothing that
7 had to be done.

8 But, ultimately, we are, at the end
9 of the day with this big claim against Royal, and
10 there's really no benefit to the estate. And
11 then Royal now calls the shots.

12 I think it is -- and I know Your
13 Honor had ruled. I'll just add one more point.

14 If there was some oversight to the
15 delegation aspect that I feel more comfortable,
16 but what we have, in effect, is Royal's ability
17 now to sue whoever they want, when they want, and
18 to use the Bankruptcy Court as a forum for that.

19 Now, because they're 90 percent of
20 the unsecured claims, they have the most benefit
21 available. I think the Court should have some
22 oversight over that.

23 I think that it should be noticed to
24 all the unsecured creditors that the Trustee has